

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Dunn Analyst: Marion Mann DeJong Bill Number: SB 1724

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 05/17/2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Prohibit Disclosure of Tax Return Information by Tax Preparers and Businesses

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 23, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would:

- Expand criminal sanctions for disclosures of tax return information by businesses that prepare returns to add certain disclosures made either within the tax preparing firm or to subsidiaries or affiliates of the tax preparing firm.
- Add filing an income tax return electronically to the list of activities that defines persons engaged in the business of preparing tax returns or assisting in the preparation of tax returns.
- Modify the definition of "tax preparers" to include persons who, for consideration other than a fee, prepare tax returns for another person.
- Make each violation of the criminal provisions regulating the practice of tax preparers a separate offense.
- Establish a civil penalty for disclosure of tax return information provided by a consumer in connection with financial or business-related transactions.
- Specify that tax return information includes information obtained through an electronic medium.
- Require the disposal of tax return information in a manner that protects the identity of the taxpayers.

This bill does not directly impact the programs administered by the Franchise Tax Board.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> </u> <u>X</u> PENDING

Legislative Director

Date

Johnnie Lou Rosas

6/6/00

SUMMARY OF AMENDMENT

The April 25, 2000, amendments specify that tax return information includes information obtained through an electronic medium and requires the disposal of tax return information in a specified manner to protect the identity of the taxpayer. These amendments also established a misdemeanor for any person who disposes of information obtained to prepare a tax return in a manner that permits the disclosure of the identity of a taxpayer.

The May 4, 2000, amendments add filing an income tax return electronically to the list of activities that defines persons engaged in the business of preparing tax returns or assisting in the preparation of tax returns. The amendments also modify the definition of "tax preparers."

The May 17, 2000, amendments changed the code section number of the provision added to the Civil Code and specified that each violation of the provisions for disclosure of tax return information provided by a consumer in connection with financial or business-related transactions would be a separate cause of action.

The amendments resolved the policy consideration regarding electronic transmittal of returns raised in the department's analysis of the bill as introduced February 23, 2000. The "Effective Date," "Background," current law discussion in "Specific Findings," and "Fiscal Impact" from the department's prior analysis still apply. A new discussion of what this bill does is provided below. In addition, the remaining "Policy Consideration," the "Implementation Consideration," and "Board Position" are reiterated below.

SPECIFIC FINDINGS

Taxpayer Protection

This bill would expand criminal sanctions for disclosure of tax return information by businesses that prepare returns to add disclosures made either within the tax preparing firm or between subsidiaries or affiliates of the tax preparing firm. "Affiliate" would mean any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity.

This bill would add filing a state or federal income tax return by electronic transmittal of return data directly to the Franchise Tax Board or the Internal Revenue Service to the list of activities that defines persons engaged in the business of preparing tax returns or assisting in the preparation of tax returns.

This bill would specify that tax return information includes information obtained through an electronic medium.

This bill would make it a misdemeanor for persons to dispose of tax return information in such a manner that the disposed information, alone or in combination with other publicly available information, could be used to identify the taxpayer.

For purposes of the chapter in the Business and Professions Code that regulates the practice of tax preparers, **this bill** would modify the definition of "tax preparers" to include persons who, for consideration other than a fee, prepare tax returns for another person.

This bill also would make each violation of provisions regulating the practice of tax preparers a separate offense.

Consumer Protection

This bill would establish civil penalties for most disclosures of tax return information. Protected information includes information obtained through an electronic medium or information provided by a consumer in connection with financial or business-related transactions. Disclosure is permitted where the disclosure is:

- authorized by written consent of the consumer (in a separate document that states who the information will be disclosed to and how that person will use the information);
- expressly authorized by law;
- necessary to complete the financial or business-related transaction; or
- pursuant to a court order.

A prohibited disclosure would include disclosures made internally within the entity conducting financial or business-related transactions with the consumer or by that entity to any of its subsidiaries or affiliates.

"Affiliate" would mean any entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity.

Unrelated use of tax information without the consumer's consent would also be prohibited. "Unrelated use" would mean any use that is not necessary to effect, administer, or enforce the financial or other business-related transaction with the consumer.

Civil penalties would be imposed if tax return information obtained in connection with financial or business-related transactions was not disposed of in a manner that protects the identity of the consumer. Penalties would be imposed if the disposed information, alone or in combination with other publicly available information, could identify the consumer.

Each violation of these provisions would be a separate cause of action for which damages could be recoverable.

Policy Considerations

This bill would provide additional protection to taxpayers from unauthorized disclosure and careless disposal of tax return information. The added protection would cover businesses that prepare and electronically file tax returns and should reduce taxpayer fears regarding electronic filing. Taxpayer confidence in electronic filing is needed to accomplish the department's goal of a paperless filing system.

Implementation Consideration

Implementing this bill would not affect the department's programs and operations, but may foster greater acceptance of paperless, electronic filing methods.

BOARD POSITION

Pending.